

§ 41.6

assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and

(3) Otherwise consult with interested persons, including handicapped persons or organizations representing handicapped persons, in achieving compliance with section 504.

§ 41.6 Interagency cooperation.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more agencies or where two or more agencies cooperate in administering assistance for a given class of recipients, the agencies shall:

(1) Coordinate compliance with section 504, and

(2) Designate one of the agencies as the primary agency for section 504 compliance purposes.

(b) Any agency conducting a compliance review or investigating a complaint of an alleged section 504 violation shall notify any other affected agency upon discovery of its jurisdiction and shall inform it of the findings made. Reviews or investigations may be made on a joint basis.

§ 41.7 Coordination with sections 502 and 503.

(a) Agencies shall consult with the Architectural and Transportation Barriers Compliance Board in developing requirements for the accessibility of new facilities and alterations, as required in § 41.58, and shall coordinate with the Board in enforcing such requirements with respect to facilities that are subject to section 502 of the Rehabilitation Act of 1973, as amended, as well as to section 504.

(b) Agencies shall coordinate with the Department of Labor in enforcing requirements concerning employment discrimination with respect to recipients that are also federal contractors subject to section 503 of the Rehabilitation Act of 1973, as amended.

28 CFR Ch. I (7–1–16 Edition)

Subpart B—Standards for Determining Who Are Handicapped Persons

§ 41.31 Handicapped person.

(a) *Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(b) As used in paragraph (a) of this section, the phrase:

(1) *Physical or mental impairment* means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major

Department of Justice

§41.51

life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

§41.32 Qualified handicapped person.

Qualified handicapped person means:

(a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question and

(b) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

Subpart C—Guidelines for Determining Discriminatory Practices

GENERAL

§41.51 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped

persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives